

1958

November 21

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OCT 01 1998

CONCORD, N.H.

Miss Ruth G. Morgan
Deputy Commissioner
Labor Department
State House
Concord, New Hampshire

Re: Bethlehem Steel Company, a Pennsylvania Corporation,
and Bethlehem Steel Corporation, a Delaware Corporation

Dear Miss Morgan:

You advise that Bethlehem Steel Company has voluntarily accepted the provisions of the Workmen's Compensation law and that it is filing with you as a self-insurer under the provisions of RSA 281:9, II. You further advise that Bethlehem Steel Corporation, which is the parent corporation of Bethlehem Steel Company, has filed with you a guaranty agreement under which it guarantees the discharge of all liability of Bethlehem Steel Company for the payment of awards under the Workmen's Compensation Act. You request our opinion as to the legality of the guaranty agreement.

Some confusion has apparently been caused in this regard because of the provisions of RSA 295:6, which provides that corporations shall not be capable of binding themselves as guarantors for others. However, RSA 295:1 specifically excepts corporations organized under RSA 294 (Business Corporations) and certain other types of corporations from the provisions of chapter 295. Accordingly, even if the above two corporations were New Hampshire corporations there is nothing in our business corporation laws which would prohibit one from guarantying the obligations of another. Such prohibition may result due to the provisions of the laws relating to the business of insurance but we express no opinion on that point at this time as the same is rendered unnecessary by what is said hereafter. Of course we might point out that the constitution or by-laws of a corporation might either expressly prohibit such guaranty agreements or may not be broad enough to confer such power upon the corporation in the first instance.

C O P Y

Miss Ruth G. Morgan

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In any event, these corporations, being foreign corporations, are not governed as to their powers generally by our business corporation law. Therefore whether or not Bethlehem Steel Corporation has the power to enter the proposed guaranty agreement depends in the first instance upon the laws of Delaware, the State of incorporation, and secondly, if not expressly prohibited by Delaware law, upon the provisions of its constitution and by-laws. I would suggest that you obtain a written opinion from company counsel to the effect that Bethlehem Steel Corporation has the power to enter such an agreement both under the laws of Delaware and its own constitution and by-laws.

I am returning to you herewith the correspondence which you received from Bethlehem Steel Company together with the aforesaid guaranty agreement and voluntary acceptance of the Workmen's Compensation Act by this Company. I am also returning Elmer Dourque's letters of October 4, 1954 and June 24, 1955, addressed to you.

Sincerely yours,

John J. Zimmerman
Assistant Attorney General

JJZ/lr